

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAMARIO JOSEPH BARDO,
Petitioner,

v.

KEN CLARK, Warden,
Respondent.

Case No. 19-00759 BLF (PR)

**ORDER REQUESTING FORMER
COUNSEL TO SEEK COPIES OF
FILE FROM DISTRICT
ATTORNEY'S OFFICE AND PAY
RELATED COSTS; STAYING
BRIEFING**

(Docket No. 36)

Petitioner, a California state prisoner, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 with the assistance of counsel. On October 28, 2019, the Court granted Petitioner's motion to dismiss counsel of record and reopened the matter to permit Petitioner an opportunity to file an opposition to Respondent's motion to dismiss the petition for failure to exhaust state court remedies. Dkt. Nos. 20, 23.

When Petitioner filed a response stating that he had not received any files from his former counsel, the Court granted his request to have counsel provide him with all records relevant to this case in an order filed December 4, 2019. Dkt. No. 25. Since that time, Petitioner has been granted several extensions of time based on his assertion that former counsel had yet to provide him with a copy of his case file. Dkt. Nos. 28, 32, 34. Unfortunately, former counsel sent Petitioner's case file to Corcoran State Prison where he

1 believed Petitioner was confined, but by that time Petitioner had been transferred to
2 another facility. Dkt. No. 32 at 2. The Court requested former counsel to resend another
3 copy of the file to Petitioner at his current place of confinement. *Id.*

4 Former counsel, Mr. Evans D. Prieston, has filed a letter stating that his office did
5 not make a backup copy, and that their office, like all lawyer's offices in the state, are
6 closed. Dkt. No. 36. Counsel states that his office is willing to pay whatever cost is
7 involved in obtaining a copy of Petitioner's file from either the California court system or
8 the District Attorney's office. *Id.* The Court recognizes the challenging circumstances
9 faced by everyone during the covid-19 pandemic. However, this matter cannot proceed
10 unless Petitioner has obtained a copy of his case file to which he is entitled, and he
11 reasonably relied on his former counsel to furnish him with a copy. Therefore, Mr.
12 Prieston is requested to contact the District Attorney's Office for Santa Clara County and
13 ask them to mail a copy of Petitioner's case file directly to Petitioner at his current place of
14 confinement and to charge counsel's office with the cost. This is likely a speedier process
15 than trying to obtain a copy from the state courts which are all operating at a limited
16 capacity. Counsel shall file notice of compliance with the Court **within twenty-eight (28)**
17 **days** from the date this order is filed, along with proof that he complied with the Court's
18 request by providing a copy of his communication with the Santa Clara County District
19 Attorney's Office.

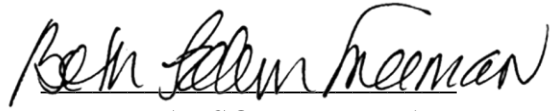
20 In light of this additional delay, Petitioner's opposition is hereby **STAYED** until
21 former counsel has filed notice of compliance. The Court will reset briefing when it
22 becomes clear that Petitioner would be receiving a copy of his case file from the District
23 Attorney's office.

24 The Clerk shall forward a copy of this order to former counsel, **Evans D. Prieston,**
25 **ESQ., at 75 Rowand Way, Suite 350, Novato, CA 94945.**

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IT IS SO ORDERED.

Dated: June 3, 2020



BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

Order Req. Former Counsel; Staying Briefing
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